No. 15243.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ROBERT C. KIRKWOOD, Controller of the State of California,

Appellant,

vs.

LEE ARENAS, RICHARD BROWN ARENAS and UNITED STATES OF AMERICA,

Appellees.

Appeals From the United States District Court for the Southern District of California, Central Division.

BRIEF FOR APPELLEES LEE ARENAS AND RICHARD BROWN ARENAS.

IRL DAVIS BRETT,
920 Rowan Building,
458 South Spring Street,
Los Angeles 13, California,
Attorney for Said Appellees.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

PAGE

Opinion below 1

Jurisdiction 1

Counter-statement of the case 2

Summary of argument 7

Argument 8

Preliminary statement 8

I.

The various Indian Acts, whether special or general and whether or not portions of appropriation acts, in respect to the same or related subject matter, are to be read and applied in pari materia as if they are one law 8

II.

These trust patented lands are immune from all taxation, including state inheritance taxes 13

III.

The funds in the registry have the same immune status as the alloted lands from the sales of which such funds were derived 16

IV.

These inheritances were not transfers under, nor economic benefits derived through or controlled by California. To the contrary, they were created by, transferred under and received solely by virtue of acts of Congress 17

Appendix. Trust Patent ..... App. p. 1

TABLE OF AUTHORITIES CITED

Cases	Page
Arenas v. Preston, et al., 181 F. 2d 62	2
Arenas v. United States, 60 Fed. Supp. 411	4
Arenas v. United States, 95 Fed. Supp. 962	5
Arenas v. United States, 140 Fed. Supp. 606	8, 14, 19
Arenas v. United States, 197 F. 2d 418	6, 11, 15
Arenas v. United States, 322 U. S. 419	9
Bowditch, Estate of, 189 Cal. 377, 208 Pac. 282	16, 17, 18
British American Oil Co. v. Board of Equalization, 299 U. S. 159	11
Converse v. United States, 62 U. S. (21 How.) 463	11
Dillingham, Estate of, 196 Cal. 525, 238 Pac. 367	16
Eatwell v. Beck, 41 Cal. 2d 128, 257 P. 2d 643	18
Greeson v. Imperial Irr. District, 59 F. 2d 529	2
Hallan v. Commerce Mining etc. Co., 49 F. 2d 103	11
Mager v. Grima, 49 U. S. (8 How.) 490	17
Monson v. Simonson, 231 U. S. 341	14
Newton, Estate of, 35 Cal. 2d 830, 221 P. 2d 952	16
Oklahoma Tax Commission v. United States, 319 U. S. 598	13, 15, 18
Schmuckler's Estate, In re, 341 Pa. 36, 17 A. 2d 876	18
Segundo v. United States, 235 F. 2d 885	2
Simpson, Estate of, 43 Cal. 2d 594, 275 F. 2d 467	14
Squire v. Capoeman, 351 U. S. 1	13, 14
Ste. Marie et al. v. United States, 24 Fed. Supp. 237	5
Ste. Marie et al. v. United States, 108 F. 2d 876	5, 11
United States v. Arenas, 158 F. 2d 730	4, 10
United States v. Freeman, 44 U. S. (3 How.) 556	10
United States v. North Am. Oil, etc., 264 Fed. 336	2
United States v. Oklahoma Tax Commission, 131 F. 2d 635	19

PAGE

United States v. Preston, 232 F. 2d 77 16
Verde River, etc. v. Salt River, etc., 94 F. 2d 936 2
West v. Oklahoma Tax Commission, 334 U. S. 717 ..... 13, 14

STATUTES

Act of June 7, 1897 (30 Stat. 62) 11
Act of March 3, 1909 (35 Stat. 781) 11
Act of June 25, 1910 (36 Stat. 855) 5
Act of June 25, 1910 (36 Stat. 859) 9
Act of October 5, 1949 (63 Stat. 705) 15
General Allotment Act (24 Stat. 388, et seq.):
Sec. 1 ..... 3, 5
Sec. 2 ..... 3, 4, 11
Sec. 3 ..... 3, 4, 11
Sec. 4 ..... 4, 12
Sec. 5 ..... 3, 4, 5, 11, 12
Sec. 6 ..... 3, 4, 7, 8, 13
Sec. 8 3
Mission Indian Act (26 Stat. 712) 3
Revenue & Taxation Code, Sec. 13601 14
34 Statutes at Large, Chap. 3504, p. 327 16
67 Statutes at Large, pp. 588, 589 14
United States Code, Title 25, Sec. 331 ..... 3, 12
United States Code, Title 25, Sec. 332 ..... 3, 4, 12
United States Code, Title 25, Sec. 333 ..... 3, 4, 11, 12
United States Code, Title 25, Sec. 334 3
United States Code, Title 25, Sec. 335 12
United States Code, Title 25, Sec. 339 ..... 3, 13
United States Code, Title 25, Sec. 345 ..... 1, 4
United States Code, Title 25, Sec. 348 ..... 3, 4, 5, 11
United States Code, Title 25, Sec. 349 ..... 3, 4, 7, 8, 13, 14, 15

PAGE

United States Code, Title 25, Sec. 353 13
United States Code, Title 25, Sec. 354 ..... 7, 15
United States Code, Title 25, Sec. 372 ..... 5, 6, 15
United States Code, Title 25, Sec. 373 15
United States Code, Title 25, Sec. 379 15
United States Code, Title 25, Sec. 396 11
United States Code, Title 25, Sec. 410 16
United States Code, Title 28, Sec. 1345 1
United States Code, Title 28, Sec. 1360(a) 14
United States Code, Title 28, Sec. 1360(b) 7, 14, 15, 19

TEXTBOOK

30 Corpus Juris Secundum, Sec. 67, p. 414, note 37 1

No. 15243.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

ROBERT C. KIRKWOOD, Controller of the State of California,

Appellant,

vs.

LEE ARENAS, RICHARD BROWN ARENAS and UNITED STATES OF AMERICA,

Appellees.

Appeals From the United States District Court for the Southern District of California, Central Division.

BRIEF FOR APPELLEES LEE ARENAS AND RICHARD BROWN ARENAS.

Opinion Below.

The District Court's opinion appears on pages 72-82 of the Transcript of Record [hereafter "R"] and is reported in 140 Fed. Supp. 606, *et seq.*

Jurisdiction.

Jurisdiction was vested in the lower court by Title 25, U. S. C., Section 345; by Title 28, U. S. C., Section 1345, and as a part of its general equity jurisdiction thereunder to dispose of the whole controversy and to make necessary decrees for distribution of funds *in custodia legis* under its control. 30 C. J. S. Equity, Sec. 67, p. 414 (note 37)

and cases cited. *Cf. Arenas v. Preston, et al.* (C. A. 9, 1950), 181 F. 2d 62, 67. Also *Segundo v. United States* (C. A. 9, 1956), 235 F. 2d 885, 889.

Counter Statement of the Case.

This is another ancillary phase of the long series of trials and appeals arising out of the allotting of portions of the trust patented tribal lands of the (Agua Caliente) Palm Springs Band of Mission Indians in severalty to three members thereof: LEE ARENAS (hereinafter called Lee), his first wife, GUADALUPE ARENAS (hereinafter called Guadalupe) and their adopted daughter, ELEUTERIA BROWN ARENAS (hereinafter called Eleuteria). The proceedings here under review concern an order and decree of the lower court [R. 90-91] that certain funds in its registry in two companion cases (1321 WM Civil—Lee) and (6221 WM Civil—Richard Brown Arenas as sole heir of Eleuteria) were not subject to liens in favor of the State of California for inheritance taxes and that such funds in 1321 WM Civil were not subject to a lien in favor of said State for income taxes. The State did not appeal from the decree that it had no *income tax* lien, but, through its Controller, Kirkwood, has timely appealed from the decree that it had no *inheritance tax* lien.

While we agree with appellant that the *facts* were not in dispute (App. Br. 4) we believe that: a restatement of such facts (including matters of which this Court, and the lower court take judicial notice[1]) will clarify the issues presented and decided.

---

[1]*Cf. Greeson v. Imperial Irr. Dist.* (C. A. 9, 1932), 59 F. 2d 529, 531; *Verde River, etc. v. Salt River, etc.* (C. A. 9, 1938), 94 F. 2d 936, 941; *United States v. North Am. Oil, etc.* (C. A. 9), 264 Fed. 336.

On February 8, 1887, the Act of Congress, known as the General Allotment Act, was approved (24 Stat. 388, *et seq.*—codified as 25 U. S. C. 331, *et seq.*). This act contained express provisions for allotment of Indian Tribal lands *in severalty* to individual members of the tribe (Sec. 5; 25 U. S. C., Sec. 348) and specifically provided for issuance of *fee simple* patents *prior to the expiration of the trust period,* in the discretion of the Secretary of the Interior (Sec. 6; 25 U. S. C. Sec. 349). By its express terms its general provisions for the allotting procedure (Secs. 1, 2 and 3; 25 U. S. C. 331-334), for *trust patents in severalty* following allotting in severalty, for *fee simple patents in severalty* prior to or following expiration of the trust period and for administrative extension of the trust period without the consent of the trust patentee (Secs. 5-6; 25 U. S. C. 348-349) were inapplicable to "any Indians in the former Indian Territory" (Sec. 8; 25 U. S. C. 339).

Section 6 (25 U. S. C. 349) also provided that: when a fee simple patent was issued *"thereafter all restrictions as to* sale, encumbrance, or *taxation* of said land shall be removed * * *."

On January 12, 1891, the Mission Indian Act was approved (26 Stat. 712). This implemented the General Allotment Act by making certain special provisions for the Mission Indians of California. The Palm Springs Band was a part thereof and Lee, Guadalupe, Eleuteria (their adopted daughter) and Richard (her son) were each members of said Band.

This Mission Indian Act provided for the selection of a reservation site upon which this Band was to be settled (preamble and Sec. 2); the issuance of a trust patent to the Band to be held in trust by the United States for 25

years (Sec. 3); the issuance during such 25 year trust period of the *tribal trust patent* of trust patents *in severalty* to qualified members of the band (Sec. 4) and that *fee simple patents* should be issued to the trust patentees in severalty *at the expiration of* the 25 year trust period (Sec. 5). There were no provisions in the Mission Indian Act for issuance of *fee simple* patents *prior to the expiration of the trust period*, nor for administrative extension of such trust period, such as was provided for in Sections 5 and 6 of the General Allotment Act (25 U. S. C. 348, 349) and there were no procedural provisions as to how and by what means selections for allotment in severalty were to be accomplished, as was provided in Sections 2 and 3 of the General Allotment Act. (25 U. S. C., Secs. 332-333).

Pursuant to the Mission Indian Act, the lands from which the proceeds here under consideration were derived, and others adjacent to what is now the City of Palm Springs were selected and trust patented to the Palm Springs Band by President Grover Cleveland (App. pp. 1-3) on May 14, 1896; the Secretary of the Interior commenced allotment in severalty proceedings through a special allotting agent, Wadsworth, *Arenas v. U. S.*, 60 Fed. Supp. 411, 414, who was directed to allot *pursuant to the General Allotment Act* (*U. S. v. Arenas,* 158 F. 2d 730, 735), *i. e.,* Section 5; 25 U. S. C. 348. The Secretary disapproved two separate allotment schedules which Wadsworth prepared and submitted to him in 1923 and 1927, respectively, and in both of which Lee, Eleuteria and Guadalupe were listed as allottees.

Other allottees than the Arenas family (the Ste. Maries) commenced actions in the lower court under Title 25, U. S. C. Section 345, to enforce completion of their al-

lotments and the issuance to them of trust patents in severalty, but were denied such relief (*Ste. Marie et al. v. United States*, 24 Fed. Supp. 237); this lower court decision was affirmed by this Court, partially upon the ground that the provisions of Section 5 of the General Allotment Act (25 U. S. C. 348) was inapplicable (*Ste. Marie et al. v. United States*, 108 F. 2d 876, 880-881), a petition for certiorari was denied because filed too late. 311 U. S. 652.

In 1940 Lee Arenas commenced a new action to enforce his personal and inherited rights to allotments and trust patents in severalty. He, too, lost in the lower court through summary judgment (unreported) based upon the *Ste. Marie* judgment and on appeal to this court (137 F. 2d 199) but won reversal and remand in the Supreme Court (322 U. S. 419) following which his rights to allotment and his rights as heir of Guadalupe were adjudged and upheld *under the General Allotment Act* in the lower court (60 Fed. Supp. 411), affirmed on appeal in this Court (158 F. 2d 730) and certiorari was denied, 331 U. S. 842. Subsequently, trust patents were issued to Lee [R. 7-8, 89]; to the unnamed heirs and devisees of Guadalupe [R. 8, 89] and to Eleuteria [R. 27, 89-90].

In separate administrative proceedings under Section 1 of the Act of June 25, 1910 (36 Stat. 855; 25 U. S. C. 372) it was determined that Eleuteria was the adopted daughter of Lee and Guadalupe and, as such, entitled to one-half of Guadalupe's allotted lands [R. 10, 89] and a trust patent was issued vesting undivided one-half interests in Guadalupe's allotted lands in Lee and in Eleuteria [R. 10-11, 89]. Such action was confirmed by the lower court (*Arenas v. U. S.*, 95 Fed. Supp. 962)

and affirmed by this court (*Arenas v. U. S.*, 197 F. 2d 418). This is the *first succession of title through inheritance* from which appellant derives its claim for California inheritance taxes.[2]

Eleuteria died intestate on April 26, 1954 [R. 13, 89] and in subsequent administrative proceedings under 25 U. S. C. 372 her surviving son, Richard Brown Arenas, was adjudged her sole heir at law and entitled to inherit her inherited interest in Guadalupe's allotment and Eleuteria's own allotment [R. 13, 29, 89-90]. This is the *second succession of title through inheritance* from which appellant derives its claim for California inheritance taxes.

Following issuance of the trust patents and several appeals to this Court (181 F. 2d 62, 68, and 202 F. 2d 740) the attorneys who represented Lee and Eleuteria were adjudged to have charging liens for fixed amounts of fees and costs upon the lands trust patented to Lee and Eleuteria, including those inherited through Guadalupe [R. 8-9, 28, 89-90]; the lower court ordered them sold to satisfy such liens [R. 11-12, 31, 89-90] but appellee Indians were able to effect private sales of portions thereof, including some of the inherited lands, so as to satisfy such liens [R. 12-13, 31, 89-90] and some of the cash proceeds remained in the registry of the lower court when the proceedings here under review were commenced [R. 14-15, 32-33, 89-90].

---

[2]The facts here are unique. Guadalupe's rights to an allotment in severalty were found to have accrued during her lifetime in 1927 (158 F. 2d 730, 751) and the trust patent to her heirs was decreed and issued *nunc pro tunc* 1927, but it was not until 1947 (331 U. S. 842), *ten years* after her death (March 26, 1937 [R. 8, 89]) that it was finally adjudged that Lee could inherit through her, and it was not until 1952 (197 F. 2d 418) that it was finally adjudged that Eleuteria could inherit through her (*Cf.* 95 Fed. Supp. 962, 967-968).

In order to consummate such private sales it was necessary for appellees to supply the purchasers with title insurance policies and in order to obtain them it was necessary to obtain releases of all lien claims. This was accomplished by stipulation and order that the proceeds of the sales stand in place of the trust patented lands which were sold and that all liens to which such lands were subjected, if any, were transferred to and affixed upon such funds [R. 15-16, 32-33, 89-90].

Thereafter, by the petitions and orders to show cause in both cases appellees sought and obtained the decree which is here under review [R. 7, 27, 3, 5, 83].

Summary of Argument.

1. The various Indian acts, whether special or general and whether or not portions of appropriation acts, in respect to the same or related subject matter, are to be read and applied *in pari materia,* as if they were *one* law.

2. These trust patented lands were and are immune from taxation until a fee patent is issued by virtue of Title 25, U. S. C., Secs. 349 and 354, and Title 28, U. S. C., Sec. 1360(b).

3. The funds, which are the immediate subject matter of this appeal, stand in the same immune status as the lands from which they were derived.

4. These "inheritances" were not transfers *under the succession laws of California,* nor were they the shifting of economic benefits, nor the transmission or receipt of benefits *derived through or subject to the control of California.* To the contrary, they were created by, transferred under and received solely by virtue of, Acts of Congress. Hence, California had no right to an inheritance tax or lien thereon.

ARGUMENT.

Preliminary Statement.

It is difficult to improve upon the exhaustive, documented memorandum of opinion which was prepared and filed by the trial court [R. 72-82; *Arenas v. U. S.*, 140 Fed. Supp. 606-610] which completely and decisively meets and disposes of every point raised in the argument in appellant's brief, excepting only the rule that these Indian acts are to be read and applied *in pari materia.* We, therefore, unhesitantly cite and rely upon each and every of the points made, cases cited and conclusions reached in said opinion as our preliminary answer to appellant's brief. We shall, however, add a brief discussion of the four points enumerated under our summary of argument, *supra.*

I.

The Various Indian Acts, Whether Special or General and Whether or Not Portions of Appropriation Acts, in Respect to the Same or Related Subject Matter, Are To Be Read and Applied in Pari Materia, as if They Are One Law.

On pages 12-17 of his opening brief, appellant asserts that the allotments through which Lee, Guadalupe and Eleuteria received their trust patents to portions of the tribal land in the Palm Springs Reservation were derived through the Mission Indian Act and not through the General Allotment Act and, building upon such premise and upon the further premise that Section 6 of the General Allotment Act (25 U. S. C., Sec. 349) is not applicable to these lands, concludes that Congress has not exempted these trust allotments from taxes. This issue becomes completely decisive of the contentions made and con-

clusions reached by appellant by reason of the fact that he has expressly conceded that:

> "The Supreme Court has clearly indicated that in those cases where Congress has intervened and granted an exemption * * * the State will be prohibited from assessing a tax * * *." (App. Br. 11), and
>
> "* * * in the recent case of Squire v. Capoeman, 351 U. S. 1, 7-8, the Supreme Court interpretated Section 6 (of the General Allotment Act) as exempting from Federal income taxes, a trust allotment awarded * * * under the General allotment Act. It would appear, therefore, that as to trust allotments issued under the General Allotment Act, Section 6 is effective to exempt such trust allotments from taxes." (App. Br. 13.)

In the first place appellant errs in his facts. For the allotments to the Arenas family were made under the General Allotment Act as amended by the Act of June 25, 1910 (36 Stat. 859). This has been judicially determined by both the Supreme Court and this Court in the companion cases which have passed upon, interpreted and enforced these Arenas Allotments, viz.:

> "In 1916, however, Secretary Lane called the neglect to the attention of Congress and asked that he be authorized to make allotments in quantities governed by the General Allotment Act of 1887 as amended by Section 17 of the Act of June 25, 1910 (36 Stat. 859) instead of those set out in the Mission Indian Act of 1891. Thereupon, Congress passed the act of March 2, 1917 (39 Stat. 976) by which it authorized and directed the Secretary to proceed under the act of 1910 * * *." *Arenas v. United States,* 322 U. S. 419, 422.

"* * * It is highly relevant to point out that Wadsworth was specifically instructed by the Commissioner of Indian Affairs, with the approval of the Assistant Secretary of the Interior, to make all the Mission Indian allotments 'under the provisions of the Act of Congress of February 8, 1887 (24 Stat. 388) as amended by the Act of June 25, 1910 (36 Stat. 855) and supplemented by the act of March 2, 1917 (39 Stat. 969-976).' And Wadsworth followed his instructions * * *."

United States v. Arenas (C. A. 9, 1947), 158 F. 2d 730, 735.

But, assuming *arguendo,* that both courts were in error, appellant must still fail for the reason that the provisions of the General Allotment Act and those of the Mission Indian Act and the numerous other Acts of Congress in relation to allotments in severalty (excepting where certain states or Indian Tribes or allotments are expressly excepted from the application thereof) are to be read and applied *in pari materia* and as if they were *one* law.

"The correct rule of interpretation is that if divers statutes relate to the same thing, they are all to be taken into consideration in construing any one of them, and it is an established rule of law that all acts *in pari materia* are to be taken together as if they were one law * * *."

United States v. Freeman, 44 U. S. (3 How.) 556, 564.

"It is obvious, therefore, that in order to carry into execution the intention of the legal department of the Government these various laws on the same subject matter must be taken together and construed

> with each other, and we should defeat instead of carrying into execution the will of the law making power if we selected one or two of the acts and founded our judgment upon the language they contain without comparing and considering them in association with other laws passed upon the same subject."
>
> *Converse v. United States,* 62 U. S. (21 How.) 463, 467.

The Federal Supreme Court has directly applied this rule to special and general Indian laws involving the leasing of restricted Indian mineral lands. *British American Oil Co. v. Board of Equalization,* 299 U. S. 159, 166. The Court of Appeals for the Tenth Circuit has applied this rule in construing a *special* act affecting the leasing of allotments to the Quapaw Indians (Act of June 7, 1897; 30 Stats. 62, 72) and the provisions of a *general mineral leasing* act derived from an appropriation act (act of March 3, 1909; 35 Stat. 781, 783, codified as 25 U. S. C., Sec. 396); *Hallam v. Commerce Mining etc. Co.,* 49 F. 2d 103, 108. This court has applied this rule by holding that Section 5 of the General Allotment Act (25 U. S. C., Sec. 348) was applicable to these very allotments. *Arenas v. United States* (C. A. 9, 1952), 197 F. 2d 418, 422.

Furthermore, as pointed out by the late Justice Garrecht, who wrote the majority opinion in 158 F. 2d 730, *et seq.,* through which this court completely overruled its former opinion in *Ste. Marie v. United States,* 108 F. 2d 876, there are no provisions in the Mission Indian Act comparable to Sections 2 and 3 of the General Allotment Act

(25 U. S. C., Secs. 332 and 333) which prescribes how and by whom in behalf of the Indian and in behalf of the Government allotments in severalty are to be selected, made and issued and without which Sections 4 and 5 of the Mission Indian Act would be inoperative (*Cf.* 108 F. 2d 876, 888-889). We quote two paragraphs to illustrate:

> "Furthermore, there are no provisions in the Mission Indian Act for an allotting agent to make allotments or for any survey or classification of lands. This procedure is all supplied by the General Allotment Act and the various amendments thereof. With respect to those particulars there were no other statutes to guide the alloting agent in what he did." (P. 888.)

> "* * * It is well to keep in mind * * * that any method of allotment suggested in the Mission Indian Act is so wanting in substance or form that the allotting officer had to borrow method and procedure from the General Allotment Act." (P. 889.)

From which it follows that appellant's concept that the tax immunities contained in the various Acts of Congress which were discussed under point II next following are inapplicable to these funds and these trust patented lands because such acts are not a part of the Mission Indian Act is entirely without substance and that all of these acts must be read and applied *in pari materia.*[3]

---

[3]Furthermore, the General Allotment Act is made applicable to these lands because (1) the reservation was created by Act of Congress, *i. e., t*he Mission Indian Act *Cf.* 25 U. S. C., Section 331, and (2) some of the land was purchased for it by the U. S. (108 F. 2d 876, 888), *Cf.* 25 U. S. C. 335.

II.

These Trust Patented Lands Are Immune From All Taxation, Including State Inheritance Taxes.

Having demonstrated under point I that the General Allotment Act and other Indian Acts are applicable here (the California Mission Indians not being expressly excepted as were the Oklahoma Indians, 25 U. S. C., Secs. 339, 349, 353) three decisions of the Federal Supreme Court have established these principles:

(a) If any Indian property is exempted by Congress from direct taxations "they cannot be included in the estate for inheritance tax purposes." *Oklahoma Tax Commission v. United States* (1943), 319 U. S. 598, 611; *West v. Oklahoma Tax Commission* (1948), 334 U. S. 717, 727-728.

(b) The literal language of 25 U. S. C. 349 (Sec. 6 of General Allotment Act) evinces a congressional intent to subject an Indian Allotment to *all* taxes only *after* a *fee simple patent* is issued to an allottee. *Squire v. Capoeman* (1956), 351 U. S. 1, 7-8.

(c) While exemptions from taxation should be clearly expressed, doubtful expressions are to be resolved *in favor of* the Indian, and, if the language may be interpreted in more than one way, one of which would prejudice and the other would *not* prejudice the rights of the Indian, the latter interpretation must be given. *Squire v. Capoeman* (1956), 351 U. S. 1, 6-7.

(d) It is irrelevant whether the exempting statute was enacted before or after the taxing statute. *Squire v.*

Capoeman (1956), 351 U. S. 1, 7. Applying these principles here, it follows that these Arenas trust patented[4] lands were and are exempt from inheritance taxes by California.

Applying the same principles of interpretation *in favor of* and not to the detriment of the Indian, it is readily apparent that subsection (b) of 28 U. S. C., Section 1360 (67 Stat. 588, 589) must be construed as an *express exemption* of these (trust patented) restricted, allotted lands for *all* taxes. [R. 80-81; *Arenas v. U. S.,* 140 Fed. Supp. 606, 609-610]. As Judge Mathes points out, Title 25, Section 349, was in effect and the case of *West v. Oklahoma Tax Commission* (1948), 334 U. S. 717, 727-728, had been decided *before* this 1953 act was passed. Clearly Congress knew that in subdivision (a) of 28 U. S. C., Section 1360 (*Cf.* App. Br. Appen., p. 1) it was enacting a law which gave California broad civil jurisdiction and authority which would, unless excepted from the grant, include the rights to alien, encumber and tax, viz.:

> "(a) * * * those civil laws of such state[5] that are of general application to private persons[6] shall have the same force and effect within such Indian country as they have elsewhere in the State. * * *."

---

[4]A trust patent is in reality no more than an *allotment certificate. Squire v. Capoeman* (1956), 351 U. S. 1, 3—Footnote 5; *Monson v. Simonson* (1913), 231 U. S. 341, 345.

[5]All Indian country within California is included.

[6]California's Inheritance Tax Act is of general application to private persons and privately owned property. Revenue & Taxation Code, Sec. 13601; *Estate of Simpson* (1954), 43 Cal. 2d 594, 597, 275 F. 2d 467.

Congress also knew that it had established a pattern of nontaxability of Indian trust patented or allotted lands (25 U. S. C., Secs. 349, 354, 379, and Sec. 1 of the Act of October 5, 1949 (63 Stat. 705, Sec. 5)). Congress also knew that in the *Oklahoma Tax Commission* case, *supra,* the Federal Supreme Court had held, by implication [R. 79; 140 Fed. Supp. 606, 609] that if State laws and State administrative and judicial officers could fix and control succession by heirs, *such* State could tax and delimit the rights it *thus controlled* and Congress also knew that by 25 U. S. C., Sections 372 and 373, it had completely withdrawn such right to fix and control wills and succession from all State control (*Cf. Arenas v. United States* (C. A. 9, 1952), 197 F. 2d 418, 420-421, and cases cited).

Having such congressional knowledge in mind, it is the plain intent of subdivision (b) of 28 U. S. C., Section 1360, that trust patented Indian lands could not be aliened or encumbered except as *permitted by Congress;* that they could not be taxed *at all* and that the State could not *at all* control the "ownership, right of possession of or any interest in" such property. Without which right "in probate proceedings or otherwise" the State would have no basis upon which to claim or enforce payment of an "inheritance tax."

> "In other words, the (inheritance) tax is imposed and is sustainable upon the theory that a state which confers the privilege of succeeding to property may attach thereto the condition that a portion of the property shall be contributed to that state. Neces-

sarily, then, and concededly a succession to property effected independently of the authority of a particular state is not taxable by that state and is not within the purview of our inheritance tax acts."

Estate of Bowditch[7] (1922), 189 Cal. 377, 379, 208 Pac. 282;

Cf. Estate of Dillingham (1925), 196 Cal. 525, 532, 238 Pac. 367.

It is submitted, therefore, that these Arenas allotments were and are not taxable for inheritance taxes, or at all, by California.

III.

The Funds in the Registry Have the Same Immune Status as the Allotted Lands From the Sales of Which Such Funds Were Derived.

Little time need be spent on this point for appellant is foreclosed here by its stipulation with appellees and the lower court's approval thereof and order pursuant thereto [R. 16, 34, 89, 90; App. Br. 4].

"* * * but the sale and the payment into court occurred under agreement of all parties with and under the stipulation that the money would be under the same restriction as the land * * *."

United States v. Preston (C. A. 9, 1956), 232 F. 2d 77, 80.

They were also immune by the provisions of 25 U. S. C., Section 410 (34 Stat. 327 c. 3504).

---

[7]We are aware that this case has been overruled, in so far as it holds that intangible personal property, not located in a State, is not taxable thereby for inheritance taxes (*Estate of Newton* (1950), 35 Cal. 2d 830, 221 P. 2d 952), but the principle quoted remains intact. *Cf.* our Point IV, *infra.*

IV.

These Inheritances Were Not Transfers Under, nor Economic Benefits Derived Through or Controlled by California. To the Contrary, They Were Created by, Transferred Under and Received Solely by Virtue of Acts of Congress.

Such determination by the trial court [R. 76-78; 140 Fed. Supp. 606, 608-609] is so well documented and supported that it requires no further argument. Appellant's argument (App. Br. 32-34) misses the *fundamental basis* of the right *to tax succession:*

> "* * * if a state may deny the privilege altogether, it follows that when it grants it it may *annex to the grant* any conditions which it supposes to be required by its interests or policy" (emphasis supplied).
>
> *Mager v. Grima* (1850), 49 U. S. (8 How.) 490, 494;
>
> *Cf. Estate of Bowditch* (1922), 189 Cal. 377, 379, 208 Pac. 282.

> "But only 'the authority which confers it may impose conditions upon it.'" [R. 77; 140 Fed. Supp. 606, 608.]

> "Consequently the legislature has the power to take away both rights (of inheritance and of testamentary disposition) and to make the state the successor to all property upon the death of the owner. The *right and power to impose a succession tax rests upon this principle*" (emphasis added).
>
> *Estate of Bowditch, supra,* p. 379.

Simple questions and the necessary answers thereto solve our problem here. Could California, in any manner

deprive Lee or Richard Arenas of their inherited rights in these allotted lands? Of course not. Could California substitute itself in their place as successor to said lands? Of course not. Where, then, is the *control basis to sustain the right to tax?* Quoting *Bowditch,* again, the answer is:

> "Necessarily, then * * *, a succession effected entirely independently of the authority of (the) State is not taxable by that State and is not within the purview of (its) inheritance tax acts." 189 Cal. 377, 379, 208 Pac. 282.

As was stated by the Pennsylvania Supreme Court, under similar circumstances to those here present:

> "There was no transfer by will or by the intestate laws (of Pennsylvania) of these adjusted service bonds. They passed to the heirs of the decedents as the ultimate donees * * * of the National Government, not by virtue of the intestate laws of this commonwealth, but by reason of the terms of an Act of Congress; for which reason, it seems clear that no (inheritance) tax is due * * *."
>
> *Re Schmuckler's Estate* (1941) 341 Pa. 36, 17 A. 2d 876, 878.

Appellant seeks support from the *Oklahoma Tax Commission* cases (App. Br., pp. 10, 11, and throughout) but, as the California Supreme Court has said:

> "* * * the language used in any opinion is to be understood in the light of the facts and the issue then before the court * * *."
>
> *Eatwell v. Beck* (1953), 41 Cal. 2d 128, 136, 257 P. 2d 643.

And as Judge Mathes [R. 79; *Arenas v. U. S.*, 140 Fed. Supp. 606, 609) and Judge Murrah (*United States v. Oklahoma Tax Commission* (C. A. 10, 1942), 131 F. 2d 635, 639) both point out, Oklahoma law not only created the right but through *its courts* and *its administrative Officials* it could control such rights. Rights and privileges which are *expressly denied* to California (28 U. S. C. 1360(b)).

It is respectfully submitted that the judgment below should be affirmed with costs to appellees.

IRL DAVIS BRETT,

Attorney for Appellees, Lee Arenas and Richard Brown Arenas.

APPENDIX.

THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, Greeting:

Whereas it is provided by an Act of Congress entitled "An Act for the relief of the Mission Indians in the State of California," approved January twelfth Anno Domino one thousand eight hundred and ninety one (26 Stat. 712) that "the Secretary of the Interior shall appoint three distinterested persons as Commissioners to arrange a just and satisfactory settlement of the Mission Indians residing in the State of California upon reservations which shall be secured to them."

"Section 2" That it shall be the duty of said Commissioners to select a reservation for each band or village of the Mission Indians residing within said State, which reservation shall include as far as practicable, the land and villages which have been in the actual occupation and possession of said Indians and which shall be sufficient in extent to meet their just requirements, which selection shall be valid when approved by the Secretary of the Interior."

"Section 3" That the Commissioners upon the completion of their duties shall report the result to the Secretary of the Interior, who, if no valid objection exists, shall cause a patent to issue for each of the reservations selected by the Commissioner and approved by him in favor of each band or village of Indians occupying any such reservation, which patent shall be of the legal effect and declare that the United States does and will hold the land thus patented, subject to the provisions of Section 4 of this Act for the period of twenty-five years, in trust, for the sole use and benefit of the band or village to

which it is issued, and that at the expiration of said period the United States will convey the same, or the remaining portion not previously patented in severalty by patent to said band or village, discharged of said trust, and free of all charges or incumbrances whatsoever."

And Whereas, it appears by a letter dated October twenty six eighteen hundred and ninety-five from the Commissioner of Indian Affairs, and an Order dated October twenty eight, eighteen hundred and seventy five from the Secretary of the Interior, that a selection has been made by the Commissioners appointed and acting under said Act of Congress of January twelfth eighteen hundred and ninety one for the Agua Caliente Band or Village of Mission Indians covering sections twelve, fourteen, twenty-two, twenty-four, twenty six and thirty four of Township four south of range four east of the San Bernardino Meridian in the State of California, containing three thousand eight hundred and forty four acres and eighty hundredths of an acre.

Now Know Ye: that the United States of America in consideration of the premises and in accordance with the provisions of the third section of the said Act of Congress, approved January twelfth eighteen hundred and ninety one, hereby declares that it does and will hold the said tracts of land selected as aforesaid (subject to all the restrictions and conditions contained in the said Act of Congress of January 12, 1891) for the period of twenty five years in trust for the sole use and benefit of the said Agua Caliente Band or Village of Mission Indians, according to the laws of California, and at the expiration of said period the United States will convey the same, or the remaining portion not patented to individuals, by patent to said Agua Caliente Band or Village

of Mission Indians as aforesaid in fee simple discharged of said trust and free of all charge or incumbrance whatsoever—Provided that when patents are issued under the fifth Section of said Act of January twelfth eighteen hundred and ninety-one in favor of individual Indians for lands covered by this patent they will override (to the extent of the land covered thereby) this patent, and will separate the individual allotment from the lands left in common; and there is reserved from the lands hereby held in trust for said Agua Caliente Band or Village of Mission Indians, a right of way thereon, for ditches or canals constructed by the authority of the United States.

In Testimony Whereof, I, Grover Cleveland, President of the United States of America have caused these letters to be made Patent and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington this fourteenth day of May in the Year of our Lord one thousand eight hundred and ninety six and of the Independence of the United States the one hundred and twentieth.

By the President, Grover Cleveland

By M. McKean, Secretary

L. Q. C. Lamar
Recorder of the General Land Office

Recorded Vol. 21—pp. 231 to 233 inclusive.